

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT BERGSTROM AND THOMAS
BERGSTROM, heirs representing deceased
Navy Capt. EDWARD BERGSTROM,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,
THE DEPARTMENT OF DEFENSE,
THOMAS W. HARKER, Acting Secretary
of the Navy¹,

Defendants.

Case No. 2:21-cv-00055 MJP

JOINT STATUS REPORT

The parties submit this Joint Status Report and Discovery Plan as required by the Court's Order Regarding FRCP 26(f) Conference, Initial Disclosures, Joint Status Report.

1. Statement of the Nature and Complexity of the Case.

Plaintiffs bring claims under the Administrative Procedure Act ("APA"), the Tucker Act, and the 14th Amendment to the U.S. Constitution. This case is not complex.

Plaintiff states that the relief sought is the award of documented earned World War II combat medals, to wit: A) the original written recommended Navy Cross award for cited actions in the 1942 Aleutian Campaign, and B) a second Navy Cross for previously unrecognized

¹ As of January 20, 2021, Thomas W. Harker became Acting Secretary of the Navy and is automatically substituted for Defendant Kenneth J. Braithwaite under Fed. R. Civ. P. 25(d).

documented specific actions in deterring likely enemy submarine attack on the *USS U.S. Grant* the result likely total loss of crew and ship, in June 1942, and C) a Distinguished Flying Cross for documented actions in December 1941 in saving his crew and airplane from loss having been shot down, and D) the Medal of Honor for documented actions in January 1942 by rescuing his vulnerable moored aircraft and crew from loss in Ambon Harbor by flying to safety while enemy ambush destroyed other moored aircraft, and E) \$10,000 damages.

2. Proposed Deadline for Joining Additional Parties.

July 19, 2021.

3. Magistrate Judge.

The parties do not consent to a Magistrate Judge.

4. Discovery Plan.

It is defendants' position that this case should proceed only under the APA because the other two claims are frivolous. Because this is a case under the APA, discovery is not warranted and this case is exempt from the requirement to provide initial disclosures. Plaintiffs seek relief under one or multiple theories as presented in the Complaint.

Plaintiffs are not aware of any need for discovery at this time, do not need discovery, and will not seek it absent new material facts. Plaintiffs request any possible discoverable information be preserved.

5. The Parties' Views on LCR 26(f)(1)

(A) Prompt Case Resolution, Suggestions to Shorten or Simplify Case.

Plaintiffs' Statement: Upholding duties for judicial and economic efficiency, the claims and controversies can be resolved through stipulations of fact and negotiated agreements. Plaintiffs provided proposed stipulations to Defendants. The parties will explore options.

Defendants' Statement: there is no need for stipulations of fact at this time. Plaintiffs have filed a 52-page Complaint with exhibits. The factual allegations to which plaintiffs wanted defendants to respond should be in the Complaint, not in a separate "stipulation of fact." The APA claim can be resolved on cross motions for summary judgment, and the parties will propose

1 a briefing schedule for that to resolve the APA claim.

2 **(B) Alternative Dispute Resolution.**

3 The parties are open to alternative dispute resolution and will discuss engaging in ADR if
4 this case does not resolve through stipulations, negotiations, and/or dispositive motions.

5 **(C) Related Cases.**

6 There are no related cases.

7 **(D) Discovery Management**

8 As set forth above, absent material changes, there will be no discovery in this case.

9 **(E) Anticipated Discovery Sought**

10 There will be no discovery in this case, absent material changes.

11 **(F) Phasing of Motions.**

12 Defendants will file a motion to dismiss regarding at least some of the claims. Plaintiffs
13 state their belief the parties anticipate that after that motion is resolved, the parties will agree to
14 stipulations of facts, settlement then if necessary cross motions for summary judgment for any
15 remaining claim(s).

16 **(G) Preservation of discoverable information.**

17 The parties will preserve discoverable information.

18 **(H) Privilege Issues**

19 The parties do not anticipate any issues regarding privilege in this case.

20 **(I) Model Protocol for Discovery of ESI.**

21 There will be no discovery in this case, absent material changes.

22 **(J) Alternatives to the Model Protocol.**

23 There will be no discovery in this case, absent material changes.

24 **6. Close of Discovery**

25 There will be no discovery in this case, absent material changes.

26 **7. Bifurcation.**

27 This case should be resolved with dispositive motions.

8. Pretrial Statements.

This case should be resolved with dispositive motions.

9. Suggestions for shortening the case.

This case should be resolved with dispositive motions.

10. Trial Date.

This case should be resolved with dispositive motions.

11. Whether the trial will be a jury or non-jury.

N/A

12. Number of Days for Trial.

N/A

13. Names, Addresses, and Telephone Numbers of all Trial Counsel.

Plaintiff's Counsel:

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14. Trial Date Conflicts

This case should be resolved with stipulations, settlement, dispositive motions, or ADR.

15. Service

All Defendants have been served.

1 Plaintiffs' statement: Plaintiffs served the "General Counsel Service of Process" at the
2 "Department of Justice" at the U.S. Attorney General's publically listed address, at "950
3 Pennsylvania Ave. NW, Washington DC, 20530-0001," along with the U.S. Navy and Navy
4 Secretary, and Department of Defense on/about March 22, 2021 at their respective addresses.
5 Plaintiffs served the U.S. Attorney for the Western District of Washington State on June 1,
6 2021. The parties disagree on whether service was completed on 22 March or 1 June.

7 Defendants' statement: Plaintiffs did not serve the U.S. Attorney's Office for the
8 Western District of Washington as required by Fed. R. Civ. P. 4(i) until June 1, 2021.

9 **16. Discovery Conference**

10 The parties are not requesting a conference with the Court at this time.

11 **17. Dates of Corporate Disclosure Statements.**

12 N/A

13
14 DATED this 15th day of June, 2021.

15 Submitted by:

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